

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2018-0118

RURAL MUNICIPALITY OF LA BROQUERIE

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISIONS CONSIDERED: 17(1), 17(3)(e), (f), (i)

REPORT ISSUED ON November 5, 2018

SUMMARY: The complainant requested information under the Freedom of Information and Protection of Privacy Act (FIPPA) relating to correspondence regarding a drainage issue discussed at a 2017 regular meeting of council, and a copy of the associated residents' petition. The Rural Municipality of La Broquerie (the RM) granted access to the information in part. In refusing access to some information, the RM applied subsection 17(1), clauses 17(3)(e), (f), and (i) of FIPPA. Following our investigation we found that the RM of La Broquerie's decision to refuse access was authorized under 17(3)(e), and (i) of FIPPA. Therefore, the complaint of refused access was partly supported.

COMPLAINT

On February 1, 2018, the complainant made a request under the Freedom of Information and Protection of Privacy Act (FIPPA or the act) to the Rural Municipality of La Broquerie (the RM) for access to the following records:

Unredacted copies of all [date] 2017 correspondence to the municipality related to the [location removed] drainage issue discussed at the [date] regular meeting of council, and an unredacted copy of the associated residents' petition.

On March 1, 2018, the RM issued an access decision, granting access to the records in part. In refusing access to some information, the RM relied on subsection 17(1), clauses 17(3)(e), (f), and (i) of FIPPA.

A complaint about the RM's March 1, 2018 decision was received by our office on March 8, 2018.

In his correspondence to our office, the complainant asserted his position that a petition is a public document as its sole purpose is to convey the collective will of a group of citizens to a public body through presentation at a public meeting of council. He indicated that in order for the public to determine the validity of the petition, verify the number of different individuals who signed the petition, and ensure that there are no duplicate names, minors, deceased or false information provided, the names of the signatories should not be withheld. He asserted his belief that if an individual signs a petition which is meant to be presented at a public meeting of council, that individual forfeits the right to keep his or her name private.

POSITION OF THE RM OF LA BROQUERIE

Our office contacted the RM of La Broquerie to notify the public body of the complaint and request copies of the withheld information. Our office also requested clarification regarding the provisions relied upon to refuse access and written representations explaining its position.

The RM of La Broquerie provided our office with the responsive records including correspondence between a citizen and the municipality, as well as the residents' petition. The RM explained to our office that its position is that release of the withheld information would identify the third parties who signed the petition, and this would be an unreasonable invasion of privacy as set out in clauses 17(3)(e), (f) and (i) of FIPPA.

ANALYSIS OF ISSUES AND FINDINGS

Does the mandatory exception to disclosure in section 17 of FIPPA apply to the withheld information?

FIPPA defines personal information as recorded information about an identifiable individual including an individual's name, address, telephone number, email address, and personal views or opinions. Personal information also includes information that does not directly identify an individual but when combined with information otherwise available could allow an individual to be identified.

Subsection 17(1) is a mandatory exception to access which states that the head of a public body is required to refuse to disclose personal information about another individual (a third party) if the disclosure would be an unreasonable invasion of the third party's privacy.

Disclosure harmful to a third party's privacy

17(1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's privacy.

Subsections 17(2), (3) and (4) describe considerations to help determine if a disclosure would be an unreasonable invasion of a third party's privacy. Subsection 17(2) identifies types of personal information which, if disclosed, are deemed to be an unreasonable invasion of privacy. If the considerations set out in subsection 17(2) of FIPPA do not apply to the personal information, then subsection 17(3) sets out further considerations that are to be weighed to determine if disclosure would unreasonably invade a third party's privacy.

In this case, the RM withheld third party personal information under subsection 17(1), and clauses 17(3)(e), (f), and (i) as follows:

Determining unreasonable invasion of privacy

17(3) *In determining under subsection (1) whether a disclosure of personal information not described in subsection (2) would unreasonably invade a third party's privacy, the head of a public body shall consider all the relevant circumstances including, but not limited to, whether*

(e) the personal information has been provided, explicitly or implicitly, in confidence;

(f) the personal information is highly sensitive;

(i) the disclosure would be inconsistent with the purpose for which the personal information was obtained.

We reviewed the application of these exceptions to the responsive records, which consist of the residents' petition as well as email correspondence and an application form.

Responsive Records: Correspondence & Council Meeting Delegation Application Form

Based on our review of the email correspondence and the council meeting delegation application form, we agree that the withheld information was third party personal information provided to the RM implicitly in confidence, and disclosure would be inconsistent with the purpose for which the personal information was obtained. Therefore, our review determined that RM was required to withhold the information pursuant to clauses 17(3)(e) and (i) of FIPPA, and the RM's decision to refuse access was authorized under the act. There was no evidence to suggest that the personal information withheld was highly sensitive under the circumstances; therefore we could not determine that clause 17(3)(f) applied.

Responsive Records: Residents' Petition

In our review of the residents' petition, we noted that the withheld information was third party personal information. The RM withheld the personal information pursuant to clauses 17(3)(e), (f) and (i). Clause 17(3)(e) instructs the public body to consider whether the personal information was provided to the RM either explicitly or implicitly in confidence. In this case, the individuals added their personal information to a petition expressing support for a certain point of view, a document whose intended purpose was to be presented to the municipal council of the RM of La Broquerie during a council meeting that must be open to the public under Manitoba's Municipal Act.

Meetings to be conducted in public

152(1) *Every meeting of a council or council committee must be conducted in public.*

Public's right to be present at meetings

152(2) *Everyone has a right to be present at a meeting of a council or council committee unless the person chairing the meeting expels a person for improper conduct.*

The complainant's position is that a petition to a municipal council is a public document the purpose of which is to convey the collective will or opinion of a group of people to their public body. Further, that when individuals choose to sign a public petition, they forfeit their right to keep their names private, as names and addresses are required for verification that individual petitioners reside in the municipality and are bona fide persons, not falsified information. The complainant is of the view that personal information on a petition to council is by its very nature and purpose not provided explicitly or implicitly in confidence, and therefore release would not be an unreasonable invasion of third party privacy under clause 17(3)(e).

Our office acknowledges that given the public nature of municipal council meetings, an individual signing a petition to be presented during a public council meeting may have a reasonable expectation that their personal information could be disclosed during the meeting.

We noted that the Manitoba *Municipal Act Procedures Manual* states in Part 9 – Duties of Municipalities, Subject: 1 – Access to Information / Retention of Records, page 9.1.2, that “As a general rule, any document that is presented at an open council meeting should be available to the public.”

We further acknowledge that there is a need to balance the public right to transparency of local government decision-making procedures with the privacy rights of individual citizens. Municipalities are accountable to the people who elect them and they are responsible for encouraging and enabling public participation in the governance process.

Historically, our office notes that the requirements of FIPPA concerning both access to information and the protection of personal privacy were extended to municipalities in Manitoba in 2000 when FIPPA came into effect for municipalities, planning and conservation districts and community councils. Our office feels it is worth emphasizing that transparency in government is not incompatible with the privacy requirements of FIPPA. For example, subsection 152(3) of the Municipal Act allows a council or council committee the discretion to close a meeting to the public in certain circumstances requiring confidentiality.

Our office also notes that it is possible to safeguard the privacy of individuals when dealing with matters that are properly brought before council in an open meeting. For example, the Manitoba government resource *FIPPA for Public Bodies*¹ includes suggested best practices for dealing with letters from residents that may properly become part of council agenda packages.

- *If requested by the writer, and if it would not otherwise jeopardize the intent of the letter, the municipality could sever the sensitive information. Alternatively, the municipality could ask the writer to resubmit the correspondence without the sensitive information.*

A resident-initiated petition presented to council which expresses a view or opinion of a number of citizens is not unlike each petitioner writing a letter to council to express his or her views.

¹ Under ‘Frequently Asked Questions: Municipalities’ found at http://www.gov.mb.ca/chc/fippa/public_bodies/faq2.html#council.

As part of our investigation we reviewed other municipalities' approaches to balance the dual objectives of open government and protection of privacy. We note that many municipalities across Canada operate under legislation that sets out that the public has a right to be present at council meetings that are conducted in public. Given the public nature of council meetings, an individual who signs a petition to be presented to council may have a reasonable expectation that their personal information, including their point of view on the petition issue, could be disclosed at the public council meeting. We note that some municipalities state on their public guidance information that if an issue is contentious, and it is unclear whether the individuals who signed a petition knew that their personal information may be disclosed to the public, the municipal administration may choose to sever the record prior to submission to council.

In our review of this complaint, we considered the purpose of personal information within municipal petitions. We noted that the British Columbia *Freedom of Information and Protection of Privacy Act Policy and Procedures Manual* states:²

The names of individuals signing a petition are not normally supplied in confidence. Petitions are generally considered to be public information; individuals signing a petition are publicly lending their support to a position and expect that their names may be disclosed. There may be some cases, however, in which the circumstances surrounding the collection of the signatures on a petition indicate that the individuals have signed with the understanding that their names will not be disclosed.

We agree with this position, and are of the view that while the names of individuals signing a municipal petition are not normally supplied in confidence, each case must be evaluated on its own merits. In this case, the RM of La Broquerie explained to our office that, "the individual who coordinated the petition informed the CAO (by way of phone call) that he was unaware that the petition information would be made public. He believed it was implied that the petition would go to Council members and administration of the Municipality. The third party acknowledged that they did not inform the petition signers that the petition would be a public document."

Our office reviewed the RM's website and there is no information provided to advise citizens that personal information on petitions to council will be made public. We also reviewed the petition at issue and there is no reference made to either confidentiality or public disclosure of petitioners' personal information.

We have determined that the evidence provided to our office indicates that signatories to the petition may not have been aware that their personal information would be made public once the petition was presented to council, and therefore may have signed with the understanding that their names would not be disclosed. Therefore, we are of the view that in this case the personal information may have been provided implicitly in confidence. As such, we found that the RM's

² Located in *Freedom of Information and Protection of Privacy Act Policy and Procedures Manual, FOIPPA Policy Definitions, "Supplied in Confidence"* <https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/policy-definitions#s>

decision to refuse access under clauses 17(1) in conjunction with 17(3)(e) was authorized under the act.

The public body also withheld personal information based on clause 17(3)(f), which instructs the public body to consider whether or not the personal information is highly sensitive. In this case, the personal information withheld included names, phone numbers, email addresses, signatures, and dates. The RM released petitioners' street addresses to the complainant in its response to his FIPPA access request. The RM explained to our office that providing the withheld personal information could allow the complainant to contact the individuals who signed the petition.

In our review of the withheld personal information, we note that none is typically considered to be "highly sensitive" under these circumstances. In order for personal information to be considered "highly sensitive," it must be established that its release would cause serious personal distress to the individual affected; it is not sufficient that release might cause minor embarrassment. As well, personal information may be considered "highly sensitive" if it is intended to be used to make physical contact with the individual concerned and disclosure could threaten an individual's security. In this case, we note that personal phone numbers and email addresses could permit contact with the individual petitioners, but the RM chose to release the street addresses, which could also permit physical contact with the petitioners. Therefore we find that the RM was not required to refuse access to this information as per clause 17(3)(f).

The public body also withheld personal information based on clause 17(3)(i), which instructs the public body to consider whether disclosure would be inconsistent with the purpose for which the personal information was obtained.

The RM explained to our office that it is concerned why the complainant requires the names and contact information of the individuals who signed the petition. The RM stated that it informed the complainant that a petition was provided to council and it detailed how many people signed the petition.

Clause 17(3)(i) instructs the public body to consider whether or not the disclosure of the personal information would be inconsistent with the purpose for which the information was obtained. This provision is not concerned with the motive of the FIPPA applicant who requests access to information. Generally, the purpose of an informal petition to council or a statement of opinion is to impart an opinion or view of residents to council during a meeting open to the public, to lend public support to a certain viewpoint. Our office is of the view that release of some of the personal information contained in this petition would not be inconsistent with the purpose for which it was obtained. Showing public support, or imparting an opinion as a resident of a municipality implies being a bona fide individual who resides in the RM; personal information including name and address provides the support.

However, our office is of the view that disclosure of phone numbers, emails, and signatures would be inconsistent with the purpose for which the information was obtained as this personal information is not necessary to show public support for an opinion or view. The purpose of contact information and signatures is to allow the CAO of the RM to contact signatories during a verification process if applicable, and this personal information is unnecessary to show council

that an individual supports a certain viewpoint. Therefore, release of phone numbers, email addresses and signatures in this case would be an unreasonable invasion of a third party's privacy under clause 17(3)(i).

As a result of this investigation, our office suggests that the RM of La Broquerie consider preparing and publicizing guidance materials for residents regarding petitions to council, both informal petitions that are effectively statements of opinions of residents as well as formal petitions governed under the terms of the Municipal Act and the Planning Act. Guidance materials such as policies or procedures would allow citizens to be better informed as to how their personal information will be handled throughout the petition processes. Citizens would be able to determine in advance if their personal information may become publicly available and then decide whether or not they wish to participate. Furthermore, we suggest that the RM provide clear information and perhaps consider developing templates of both an informal petition or "Statement of Opinion" as well as a formal petition under the Municipal Act to ensure that citizens limit the amount of personal information they provide to council; clearly advise signatories that their personal information may or will be disclosed publicly during a public council meeting; and be clear about what personal information may be publicly available after the council meeting.

CONCLUSION

Our office found that in this case, subsection 17(1), and clause 17(3)(e) of FIPPA applied to the withheld information; clause 17(3)(f) did not apply to the withheld information; and clause 17(3)(i) applied to some of the withheld information. Based on our findings the complaint is partly supported.

In accordance with subsection 67(3) of the Freedom of Information and Protection of Privacy Act, the complainant may file an appeal of the refusal of access decision by the RM of La Broquerie to the Court of Queen's Bench within 30 days after receipt of this report.

November 5, 2018
Manitoba Ombudsman